

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MOTIVA ENTERPRISES LLC,**

**Defendant.**

**Civil Action No.02-1292-SLR**

---

**THE DEPARTMENT OF NATURAL  
RESOURCES AND ENVIRONMENTAL  
CONTROL, an agency of the State of  
Delaware**

**Plaintiff,**

**v.**

**MOTIVA ENTERPRISES LLC,**

**Defendant.**

**Civil Action No.02-1293-SLR**

**AMENDED COMPLAINT**

Plaintiff, the United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States, at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Amended Complaint against Defendant Motiva Enterprises LLC (“Motiva” or “Defendant”), and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action brought against Motiva pursuant to the following federal statutes: the Federal Water Pollution Control Act, also known as the Clean Water Act, as

amended, 33 U.S.C. §§ 1251-1387 (“CWA”); the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 (“CERCLA”), the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11001 *et seq.*, and the Clean Air Act, 42 U.S.C. §§ 7401-7671q (“CAA”).

2. Defendant’s violations stem from a history of non-compliance with federal environmental laws and regulations at its Delaware City refinery (“Facility” or “Delaware City Refinery”). The various violations alleged herein relate, in part, to a catastrophic fire, explosion, tank collapse and spent sulfuric acid spill commencing on or about July 17, 2001, at the refinery owned and operated by Motiva Enterprises LLC, and located in Delaware City, Delaware. Defendant has also violated the Oil Pollution Prevention regulations implementing Section 311(j) of the Clean Water Act, found at 40 C.F.R. Part 112, specifically, for its failure to comply with regulations requiring certain onshore oil storage and distribution facilities to develop and implement a Spill Prevention, Control and Countermeasure Plan (“SPCC Plan”), in violation of 40 C.F.R. §§ 112.3 and 112.7. Finally, Defendant has failed to comply with the emergency notification requirements of CERCLA and EPCRA.

3. Pursuant to Sections 311(b)(7)(C), (D), and (E) of the CWA, 33 U.S.C. § 1321(b)(7)(C), (D), and (E), the United States seeks the assessment of civil penalties for Defendant’s violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) stemming from the July 17, 2001 incident. In the alternative, the United States seeks the assessment of civil penalties pursuant to Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A). In addition, pursuant to Sections 309(b) and 311(e)(2) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(e)(2), the United

States is entitled to appropriate injunctive relief that the public interest and the equities of the case requires.

4. Based on Defendant's violation of the Oil Pollution Prevention regulations, 40 C.F.R. §§ 112.1 - 112.7, the United States seeks the assessment of civil penalties pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), and injunctive relief based on Sections 309(b) and 311(e)(2) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(e)(2).

5. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States seeks reimbursement of response costs incurred and to be incurred by the United States for response actions taken at or in connection with the release or threatened release of hazardous substances at the Facility.

6. Pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), the United States seeks the assessment of civil penalties for Defendant's violations of Section 304(b) and (c) of EPCRA, 42 U.S.C. § 11004(b) and (c).

7. Pursuant to Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), the United States seeks the assessment of civil penalties for Defendant's violations of Section 103 of CERCLA, 42 U.S.C. § 9603.

8. Pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), the United States seeks the assessment of civil penalties and appropriate injunctive relief based on Motiva's violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Authority to bring this CAA claim is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605. Notice of commencement of this action has been given to the State of Delaware pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

## **JURISDICTION AND VENUE**

9. This Court has jurisdiction over the subject matter of this action, pursuant to Sections 309(b), 311(b)(3) and (7)(E) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(3), and (7)(E); Sections 103, 107, and 109(c) of CERCLA, 42 U.S.C. §§ 9603, 9607, and 9609(c); Sections 304 and 325(b)(3) of EPCRA, 42 U.S.C. §§ 11004 and 11045(b)(3); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and pursuant to 28 U.S.C. §§ 1331, 1345 and 1355.

10. Venue is proper in this judicial district, pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1395, because Defendant is located in and is doing business in this judicial district, and because all of the violations and release of hazardous substances that are the subject of this action occurred in this judicial district.

## **PARTIES**

11. Plaintiff is the United States of America, acting at the request of the United States Environmental Protection Agency (“EPA”), an agency of the United States.

12. Defendant Motiva is a limited liability company organized under the laws of the State of Delaware. At all relevant times, Defendant conducted business both within the State of Delaware and in this judicial district, including operating its Delaware City Refinery, located at 2000 Wrangle Hill Road, Delaware City, Delaware.

### **GENERAL ALLEGATIONS**

13. Motiva currently owns and operates the Delaware City Refinery, also known as the “Facility”.
14. At all relevant times, Motiva has owned and operated the Facility.
15. An unnamed tributary of the Red Lion Creek, which feeds into the Red Lion Creek, originates on the Facility property.
16. The Red Lion Creek flows into the Delaware River.
17. A tributary of the Delaware River, the Delmarva Power and Light Channel, flows through the Facility’s property and feeds into the Delaware River.
18. Prior to July 17, 2001, there existed a sulfuric acid tank farm at the Facility, consisting of six large atmospheric (above-ground), storage tanks, including Tanks 391, 392, 393, 394, 395, and 396.
19. Some of the tanks in the sulfuric acid tank farm contained “fresh” sulfuric acid, while some of the tanks held “spent” sulfuric acid, which is a mixture of sulfuric acid, sulfur dioxide, and flammable hydrocarbons, including, but not limited to, petroleum products, petroleum distillates, and refined products such as isobutane, butane, propane, isopentane, pentane, and C6+ alkylate (hereinafter “Spent Sulfuric Acid”). The isobutane, butane, isopentane, pentane, and C6+ alkylate are components of motor gasoline.
20. Tank No. 393, located within the sulfuric acid tank farm, and the acid tank farm had a known history of problems, including, but not limited to, corrosion, leaks, holes, problems with structural integrity, problems with inerting capability, and unsuitability as designed for service as a storage container for Spent Sulfuric Acid.

21. Motiva was aware of the history and problems with Tank 393, but did not act appropriately within the industry standards of care or in conformance with the general duty imposed by Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in responding to those problems and performing inspections, general maintenance, and preventive maintenance.

22. Alternatively, if Motiva was not aware of the history and problems with Tank 393, then it was grossly negligent in not being aware of those problems and violated the general duty imposed by Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

23. Motiva was grossly negligent and violated the general duty imposed by Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in its handling of Tank 393 and the sulfuric acid tank farm, including, but not limited to, its management decision making, inspections, failure to inspect, maintenance, supervision, operation, repair, evaluation, resource allocation, manipulation of the quantity and quality of the tank's contents, training, quality control, air monitoring, and approval of hot work to be performed on or near the tank on July 17, 2001.

24. Motiva's handling of Tank 393 and the sulfuric acid tank farm violated applicable industry standards of care, including but not limited to, American Petroleum Institute ("API") Standards, and violated the general duty imposed by Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

25. Motiva allowed Spent Sulfuric Acid processing equipment, including but not limited to its acid blowdown unit, to remain out of service for months prior to July 17, 2001.

26. Absent processing by the acid blowdown unit, the Spent Sulfuric Acid held in various tanks on the sulfuric acid tank farm, including but not limited to Tank 393, had an increased risk of flammability, combustion and explosion.

27. On July 17, 2001, Tank No. 393, containing Spent Sulfuric Acid, exploded and/or ruptured, caught fire and collapsed, while several workers were performing hot work in the sulfuric acid tank farm.

28. As a result of the fire and explosion, at least two of the five adjacent tanks were damaged and leaked their contents, including, but not limited to, Tank 396, which also contained Spent Sulfuric Acid.

29. A total of approximately 1,117,701 gallons of Spent Sulfuric Acid was released to the environment.

30. A quantity equal to or greater than 97,000 gallons of Spent Sulfuric Acid was released from the tanks, traveled through the Facility's storm water system, and ultimately reached the Delmarva Power and Light Channel, and a tributary of the Red Lion Creek, and the Delaware River.

31. Spent Sulfuric Acid was released from the tanks and traveled through the sewage collection system to the on-site waste water treatment plant and affected the operation of the plant.

32. Spent Sulfuric Acid was released from the tanks and discharged onto the soil at the Facility.

33. The contaminated area to which the Spent Sulfuric Acid has migrated or come to be located is defined as the "Site".

34. One person was killed by the explosion and tank collapse.

35. Another eight individuals sustained serious injuries and required hospitalization as a result of the explosion and tank collapse.

36. Additional individuals required medical treatment as a result of the explosion and tank collapse.

37. Property located at the Facility, including but not limited to vehicles, a railroad siding, various refinery infrastructure, pipes, sewer system, conveyances, valves, and critical equipment were also damaged by the fire, explosion, release of Spent Sulfuric Acid and sulfuric acid mist.

38. There are environmentally sensitive areas located a short distance from the spill along the Delaware River and its adjoining shoreline, including, but not limited to, Fort Delaware State Park on Pea Patch Island, the Chesapeake and Delaware (“C & D”) Canal and their adjoining shorelines, and the Augustine Wildlife Refuge. In addition, there are several species of fish and bird habitats present along the adjoining shoreline of the nearby inlets along the Delaware River and the C & D Canal, including, but not limited to, migratory bird nesting areas and bass spawning and nursery areas.

39. In addition to the harm to humans, the discharge of Spent Sulfuric Acid caused the death of approximately 2,400 fish and more than 240 blue crabs in the Delaware River near the discharge area.

40. On July 30, 2001, the Director of the Hazardous Site Cleanup Division, EPA Region III, formally determined that release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

41. On August 1, 2001, EPA’s Regional Administrator issued to Motiva a unilateral Administrative Order for Removal Response Action (“Acid Order”), pursuant to Section 106(a)



of CERCLA, 42 U.S.C. § 9606(a). The Acid Order required Motiva to immediately (1) properly drain all the remaining sulfuric acid out of the remaining tanks at the acid tank farm, and arrange for proper treatment, storage and/or disposal of the sulfuric acid, (2) continue to monitor two of the Facility's outfalls (discharge points) for pH on an hourly basis to detect any possible continuing release of sulfuric acid, (3) provide EPA with an inventory of all tanks at the Facility and their contents, and (4) continue to provide appropriate site-specific health and safety measures.

42. In addition, the Acid Order required Motiva to implement several long-term measures, including (1) development and implementation of a tank inspection/repair/removal program, (2) a study of the extent of contamination from the release, and (3) removal and/or treatment of contaminated soils and other media. The Acid Order directed that Motiva set forth these long-term measures in a Response Action Plan ("RAP"), which would be subject to EPA's approval and oversight.

43. EPA has performed, and is continuing to perform, both direct response actions and oversight to facilitate cleanup of the Spent Sulfuric Acid release.

#### **STATUTORY FRAMEWORK - CLEAN WATER ACT § 311**

44. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

45. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States and adjoining

shorelines in such quantities that by regulation have been determined to be harmful to the public health or welfare or environment of the United States.

46. Under Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

47. The implementing regulations at 40 C.F.R. § 110.3(a) have defined a discharge of oil into navigable waters in such “quantities as may be harmful” to include those discharges that violate applicable water quality standards. The implementing regulations at 40 C.F.R. § 117.1(a) have defined a discharge of hazardous substances in such “quantities as may be harmful” to include those discharges equal to or in excess of their reportable quantities, as set forth in 40 C.F.R. § 117.3.

48. Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), provides that:

Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of . . . [Section 311(b)(3)], shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

For violations occurring after January 30, 1997, a civil penalty in an amount up to \$27,500 per day of violation or an amount up to \$1,100 per barrel of oil or unit of reportable quantity of hazardous substances discharged shall apply, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 61 Fed. Reg. 69360 (December 31, 1996), as promulgated at 40 C.F.R. § 19.4 (table).

49. Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), provides that:

In any case in which a violation of . . . [Section (b)(3)] was the result of gross negligence . . . of a person . . . [who is the owner, operator, or person in charge of

any vessel, onshore facility, or offshore facility], the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or reportable quantity of hazardous substance discharged.

For violations occurring after January 30, 1997, a civil penalty in an amount up to \$110,000 per day of violation or an amount up to \$3,300 per barrel of oil or unit of reportable quantity of hazardous substances discharged shall apply, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 61 Fed. Reg. 69360 (December 31, 1996), as promulgated at 40 C.F.R. §19.4 (table).

#### **STATUTORY FRAMEWORK - CLEAN WATER ACT § 301(a)**

50. Pursuant to § 301(a) of the CWA, 33 U.S.C. § 1311(a), the discharge of any pollutant, including Spent Sulfuric Acid, sulfuric acid, petroleum products, petroleum distillates, and refined products by any person is unlawful except as authorized by and in compliance with CWA permitting or other provisions.

51. The term “discharge of a pollutant” includes any addition of any pollutant to navigable waters from any point source. CWA § 502(12), 33 U.S.C. § 1362(12).

52. The term “pollutant” includes, but is not limited to, solid waste, chemical wastes, and industrial waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

53. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharge. CWA § 502(14), 33 U.S.C. § 1362(14).

54. The term “person” includes an individual, firm, corporation, association, and a partnership. CWA § 502(5), 33 U.S.C. § 1362(5); CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7).

55. Pursuant to § 309(b) of the CWA, 33 U.S.C. § 1319(b), EPA may commence a civil action for appropriate injunctive relief for any violation for which EPA is authorized to issue a compliance order pursuant to § 309(a) of the CWA, 33 U.S.C. § 1319(a), which authorizes compliance orders for unlawful discharges of pollutants in violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a).

**COUNT ONE**  
**GROSSLY NEGLIGENT ILLEGAL DISCHARGE**  
**UNDER SECTION 311 OF THE CWA**

56. The allegations of paragraphs 1 through 55, above, are realleged and fully incorporated herein by reference.

57. Defendant is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

58. Defendant is an “owner or operator” of an “onshore facility” within the meaning of Section 311(a)(6) and (10) of the CWA, 33 U.S.C. § 1321(a)(6) and (10).

59. Tanks 393, 396 and other of Motiva’s acid tanks are “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), of the hazardous substance and/or petroleum products, petroleum distillates, and refined products that discharged from these tanks during the July 17, 2001 incident.

60. The Delaware City Refinery is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10). The Delaware City Refinery is also a “facility” within the meaning of Section 1001(9) of the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701(9).

61. Sulfuric acid is a hazardous substance under Section 311(b)(2) of the CWA, 33 U.S.C. § 1321(b)(2), because it is listed under 40 C.F.R. §§ 116.4 and 117.1.

62. At times relevant to this Complaint, the Facility's sulfuric acid tanks contained a "hazardous substance," namely sulfuric acid.

63. Hazardous substances were discharged, within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), from the Facility's sulfuric acid tanks into the Delaware River, the Delmarva Power and Light Channel, and a tributary of the Red Lion Creek and each of their adjoining shorelines.

64. At times relevant to this Complaint, at least two of the Facility sulfuric acid tanks, Tank 393 and Tank 396, contained Spent Sulfuric Acid, which means, in addition to sulfuric acid, the tanks contained sulfur dioxide and flammable hydrocarbons, including, but not limited to, petroleum products, petroleum distillates, and refined products such as isobutane, butane, propane, isopentane, pentane, and C6+ alkylate.

65. Petroleum products, petroleum distillates, and refined products are defined as oil under Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.

66. Sulfuric acid, petroleum products, petroleum distillates, and refined products are "pollutants" as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

67. Oil was discharged, within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), from the Facility's sulfuric acid tanks into the Delaware River, the Delmarva Power and Light Channel, and a tributary of the Red Lion Creek and each of their adjoining shorelines.

68. The Delmarva Power and Light Channel, the Red Lion Creek and its tributary, and the Delaware River are “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of the OPA, 33 U.S.C. § 2701(21).

69. The discharges of Spent Sulfuric Acid, sulfuric acid, petroleum products, petroleum distillates, and refined products during the July 17, 2001 fire and explosion were not authorized or permitted pursuant to any of the CWA provisions listed in Section 301, 33 U.S.C. § 1311(a).

70. The release and discharge of Spent Sulfuric Acid, sulfuric acid, and petroleum products, petroleum distillates, and refined products from the Facility to the Delaware River, the Delmarva Power and Light Channel, and a tributary of the Red Lion Creek and each of their adjoining shorelines violated applicable water quality standards because it exceeded the acceptable pH level and was toxic to fish and aquatic life. See Delaware Water Quality Standards found at 70 Del. Code Section 500.009.

71. The release and discharge of Spent Sulfuric Acid, sulfuric acid, and petroleum products, petroleum distillates, and refined products from the Facility was harmful because it caused loss of life, multiple injury to human life, and killed a significant number of fish and crabs.

72. The discharge of Spent Sulfuric Acid and sulfuric acid from the Facility violated Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3).

73. The discharge of petroleum products, petroleum distillates, and refined products from the Facility violated Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3).

74. Any person who is the owner, operator, or person in charge of any onshore facility from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), shall be subject to a civil penalty in an amount of up to \$27,500 per day of violation or in an amount up to \$1,100 per unit of reportable quantity of hazardous substance or barrel of oil discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as adjusted by 40 C.F.R. §19.4.

75. Under 40 C.F.R. §117.3, the reportable quantity for sulfuric acid under the CWA is 1000 pounds.

76. Under Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), as adjusted by 40 C.F.R. §19.4, in any case in which a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) was the result of gross negligence or willful misconduct, a civil penalty of not less than \$110,000 shall attach, and not more than \$3,300 per unit of reportable quantity of hazardous substance or barrel of oil discharged.

77. The discharge by Motiva of the hazardous substance and oil into waters of the United States and their adjoining shorelines resulted from Motiva's gross negligence within the meaning of Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D).

78. Accordingly, pursuant to Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), and 28 U.S.C. § 2461 note, Pub. L. No. 101-410, as amended by 31 U.S.C. § 3701 note, and 40 C.F.R. § 19.4, Motiva is liable for a civil penalty of not less than \$110,000,

and not more than \$3,300 per 1000 pounds of sulfuric acid discharged and not more than \$3,300 per barrel of oil discharged, with the penalty amount determined in accordance with Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

**COUNT TWO**  
**ILLEGAL DISCHARGE UNDER SECTION 311 OF THE CWA**

79. The allegations of paragraphs 1 through 78, above, are realleged and fully incorporated herein by reference.

80. This Second Count is plead in the alternative to the First Count.

81. In the event that Motiva is not found to have been grossly negligent resulting in a violation of the CWA under Section 311(b)(7)(D), 33 U.S.C. § 1321(b)(7)(D), Motiva is nevertheless liable for the above alleged discharge and for penalties in an amount up to \$27,500 per day of violation or an amount up to \$1,100 per unit of reportable quantity of hazardous substance or barrel of oil discharged, for violations occurring after January 30, 1997, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as adjusted in 40 C.F.R. § 19.4.

**COUNT THREE**  
**INJUNCTIVE RELIEF PURSUANT TO SECTION 311(e)(2) OF THE CWA**

82. The allegations of paragraphs 1 through 81, above, are realleged and fully incorporated herein by reference.

83. Both the public interest and the equities of this case require the grant of appropriate injunctive relief by the Court as authorized by Section 311(e)(2) of the CWA, 33 U.S.C. § 1321(e)(2).

**COUNT FOUR**  
**INJUNCTIVE RELIEF PURSUANT TO SECTION 309(b) OF THE CWA**

84. Paragraphs 1 through 83 are realleged and incorporated by reference.



85. Motiva's discharge of Spent Sulfuric Acid, sulfuric acid, petroleum products, petroleum distillates, and refined products during the July 17, 2001 fire and explosion was a discharge of a pollutant in violation of Section 301 of the CWA, 33 U.S.C. § 1311(a).

86. Accordingly, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), the United States, acting on behalf of the EPA, is entitled to appropriate injunctive relief.

**STATUTORY FRAMEWORK - CERCLA SECTION 107(a)**

87. CERCLA was enacted by Congress in 1980 to address public concerns regarding unregulated and unreported releases of hazardous substances into the environment and to address the need to cleanup uncontrolled hazardous waste disposal sites that posed potential health threats to persons living in the area near the hazardous waste sites.

88. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes the United States to respond to the release or threatened release of hazardous substances into the environment.

89. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), authorizes the United States to recover its response costs from liable parties where the costs are incurred by the United States in a manner not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

90. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defines liable parties as those parties who (a) own or operate the facility, (b) own or operate the facility at the time of the disposal of the hazardous substances, (c) arrange for the disposal of the hazardous substance at the facility, or (d) transport the hazardous substance to the facility.

**COUNT FIVE**  
**COST RECOVERY UNDER CERCLA SECTION 107**

91. The allegations of paragraphs 1 through 90, above, are realleged and fully incorporated herein by reference.

92. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

93. Sulfuric acid is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

94. The Delaware City Refinery is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

95. There has been an actual release or threatened release of hazardous substances into the environment at and from the Facility within the meaning of Sections 101(8), (22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), (22) and 9607(a).

96. Defendant is an owner and operator of the Facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

97. Defendant was also an owner and operator of the Facility at the time of disposal of hazardous substances at the Site within the meaning of 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

98. The United States was authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, to respond to the release or threatened release of hazardous substances at the Site, and has incurred response costs as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

99. The response costs have been incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

100. As of March, 2002, the United States has expended more than \$100,000 in unreimbursed response costs to address the release or threatened release of hazardous substances at the Site.

101. Defendant is liable for EPA's response costs pursuant to Section 107(a)(1) of CERCLA, and under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

**STATUTORY AND REGULATORY SCHEME**  
**OIL SPILL PREVENTION PROGRAM**

102. In 1972, Congress enacted the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.* In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321 (j)(1)(C), Congress required the President to promulgate regulations that would establish procedures for preventing and containing discharges of oil from onshore facilities into navigable waters.

103. The authority conferred by Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C) was delegated to the Administrator of EPA. In 1973, the Administrator promulgated the Oil Pollution Prevention regulations, which are published at 40 C.F.R. Part 112.

104. These regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. Part 112.

105. For purposes of Sections 311(b)(3) and 311(j)(1)(C) of the CWA, 33 U.S.C. §§ 1321(b)(3) and (j)(1)(C), EPA promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. Such quantities of oil include discharges that either: (a) violate applicable water

quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

106. 40 C.F.R. Part 112 requires regulated facilities to prepare and implement SPCC (“Spill Prevention Control and Countermeasure”) Plans, to prevent discharges of oil in harmful quantities into navigable waters.

107. Pursuant to 40 C.F.R. § 112.3(a), owners and operators of onshore and offshore facilities in operation before January 10, 1974, the effective date of the Oil Pollution Prevention regulations, had to prepare written SPCC Plans, in accordance with 40 C.F.R. § 112.7, within six months of the effective date of the regulations, *i.e.*, by July 10, 1974, and implement those Plans within one year of the effective date of the regulations, *i.e.*, by January 10, 1975. 40 C.F.R. § 112.3.

108. Owners or operators of facilities that are required to prepare an SPCC Plan shall complete a review and evaluation of the SPCC Plan, and its implementation at least once every three years from the date the facility becomes subject to 40 C.F.R. Part 112; 40 C.F.R. § 112.5(b).

### **GENERAL ALLEGATIONS**

109. Motiva owns and operates the Delaware City Refinery (“the Facility”), a refinery located in Delaware City, New Castle County, Delaware.

110. At all relevant times, Motiva or its corporate predecessor owned and operated the Facility.

111. Motiva is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility, as defined in Section 311(a)(1) of the CWA, and 40 C.F.R. §§ 112.1 and 112.2.

112. The Facility is an “onshore facility” within the meaning of Section 311 (a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, and a “non-transportation-related” facility under the definition set forth in the "Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency,” 36 Fed. Reg. 24,080 (Dec. 18, 1971), incorporated by reference by 40 C.F.R. § 112.2, and set forth in 40 C.F.R. Part 112, Appendix A.

113. The Facility is located on the shore of the Delaware River.

114. A tributary of the Red Lion Creek, which feeds into the Red Lion Creek, originates on the Facility property.

115. The Red Lion Creek flows into the Delaware River.

116. A tributary of the Delaware River, the Delmarva Power and Light Channel flows through the Facility’s property and feeds into the Delaware River..

117. The Facility has the capacity to store approximately 441 million gallons of petroleum products in aboveground storage tanks.

118. The Delmarva Power and Light Channel, the Red Lion Creek and its tributary, and the Delaware River are “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of the OPA, 33 U.S.C. § 2701(21).

119. Due to its location, in the event of a discharge of oil, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. Part 110, into or on a navigable water of the United States or its adjoining shorelines.

120. There are environmentally sensitive areas located along the Delaware River and its adjoining shoreline, including, but not limited to, Fort Delaware State Park on Pea Patch Island, the Chesapeake and Delaware (“C & D”) Canal and their adjoining shorelines, and the Augustine Wildlife Refuge. In addition, there are several species of fish and bird habitats present along the adjoining shoreline of the nearby inlets along the Delaware River and the C & D Canal, including, but not limited to, migratory bird nesting areas and bass spawning and nursery areas.

121. On or about May 8-10, 2000, EPA inspectors visited the Facility and ascertained that Motiva had failed to completely and adequately implement a SPCC Plan in accordance with 40 C.F.R. § 112.3 and § 112.7.

122. EPA found that Motiva was in violation of the Clean Water Act and the SPCC regulations promulgated thereunder by failing to prepare an adequate SPCC Plan, and failing to implement certain required spill prevention measures, described below.

123. In addition, due to Motiva’s failure to implement certain spill prevention measures, the EPA found that three of the large oil tanks presented an imminent and substantial threat to the environment.

124. Two of the large oil tanks (Nos. 3 and 167) had bottom plates which had corroded almost completely to the shell-to-bottom weld.

125. A third large oil tank (No. 245) had gaps underneath the bottom plate which were large enough to threaten the stability of the tank foundation.

126. The hole in the tank foundation was sufficiently large enough for inspectors to get partially underneath the tank, observe the underside of the tank bottom and see that it was badly corroded.

127. Tank No. 245 had not been internally inspected since its construction in 1957.

128. These tank conditions, including but not limited to, the deteriorated condition of the tank bottoms, and the lack of adequate tank support, significantly increased the likelihood of a catastrophic tank failure.

129. The three tanks that posed the gravest danger had the capacity to store significant volumes of oil. Tank 3 could store up to 7,895,076 gallons, Tank 167 could store up to 1,974,000 gallons, and Tank 245 could store up to 3,103,002 gallons.

130. The EPA determined that there were 15 other tanks that had not been inspected or maintained in accordance with the applicable industry standard, API 653, which requires that all tanks be internally inspected at a minimum of every 10 years, unless a technical evaluation regarding the absence of corrosion could extend that period to 20 years.

131. Subsequent to EPA's inspection, on June 1, 2000, EPA formally determined that conditions at the Facility posed an imminent and substantial threat to public health or welfare pursuant to Section 311(e)(1) of the CWA, 33 U.S.C. § 1321(e)(1).

132. Accordingly, pursuant to Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e), on June 22, 2000, EPA issued a Unilateral Administrative Order for Abatement of Endangerment ("Oil Order") which required Motiva to (1) immediately remove the

aforementioned three storage tanks from service and perform an out-of-service inspection of those tanks to ensure tank integrity prior to putting the tanks back into service, and (2) perform an out-of-service inspection of 15 other tanks at the Facility, in accordance with the industry standard, API 653.

133. Internal inspections conducted in accordance with the Oil Order showed that many of the large tanks had holes or pits in the floor plates and required repairs.

**COUNT SIX**  
**FAILURE TO COMPLY WITH SPCC REGULATIONS**

134. The allegations of paragraphs 1 through 133, above, are realleged and fully incorporated herein by reference.

135. Motiva failed to comply with the requirements of the Clean Water Act and the SPCC regulations promulgated thereunder, by failing to prepare and implement an SPCC Plan in accordance with good engineering practices, in violation of 40 C.F.R. §§ 112.3 and 112.7:

- (a) failing to describe spill events, corrective actions and plans for preventing reoccurrences of spills in violation of 40 C.F.R. § 112.7(a);
- (b) failing to predict the direction, rate of flow and total quantity of oil which could be discharged from the facility as a result of each major type of equipment failure in violation of 40 C.F.R. § 112.7(b);
- (c) failing to provide a complete discussion pertaining to facility drainage in violation of 40 C.F.R. § 112.7(e)(1);
  - (1) failing to restrain drainage from diked areas by valves in violation of 40 C.F.R. § 112.7(e)(1)(iii);



- (2) failing to ensure that drainage is adequate to prevent oil from reaching navigable waters in violation of 40 C.F.R. § 112.7(e)(1)(v);
- (d) failing to provide complete discussions and/or implement requirements pertaining to Bulk Storage Tanks in violation of 40 C.F.R. § 112.7(e)(2);
  - (1) failing to have adequate secondary containment around the bulk storage tanks, in violation of 40 C.F.R. § 112.7(e)(2)(ii);
  - (2) failing to perform adequate periodic inspections of the tanks, in violation of 40 C.F.R. § 112.7(e)(2)(vi);
  - (3) failing to have tanks designed to be fail-safe and avoid spills, in violation of 40 C.F.R. § 112.7(e)(2)(viii);
  - (4) failing to promptly correct visible oil leaks, in violation of 40 C.F.R. § 112.7(e)(2)(x);
- (e) failing to implement requirements pertaining to a Facility transfer operation, including failing to perform adequate periodic inspections of the piping, in violation of 40 C.F.R. § 112.7(e)(3)(iv);
- (f) failing to provide complete discussions and/or implement requirements pertaining to Inspection and Records in violation of 40 C.F.R. § 112.7(e)(8);
- (g) failing to provide complete discussions and/or implement requirements pertaining to security in violation of 40 C.F.R. § 112.7(e)(9);

- (1) failing to properly lock the master flow and tank drain valves, in violation of 40 C.F.R. § 112.7(e)(9)(ii); and
- (2) failing to have adequate lighting, in violation of 40 C.F.R. § 112.7(e)(9)(v).

136. By its failure to properly prepare and implement an SPCC Plan, Motiva violated the regulations at 40 C.F.R. Part 112, issued under CWA Section 311(j), 33 U.S.C. 1321(j), which set forth the requirements for preparation and implementation of SPCC Plans.

137. Accordingly, pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), and 28 U.S.C. § 2461 note, Pub. L. No. 101-410, as amended by 31 U.S.C. § 3701 note, and adjusted by 40 C.F.R. § 19.4, Motiva is liable for a civil penalty of not less than \$27,500 per day for each and every day its Facility was in violation of the SPCC regulations, with the penalty amount determined in accordance with Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

**STATUTORY FRAMEWORK - THE EMERGENCY PLANNING  
AND COMMUNITY-RIGHT-TO-KNOW ACT “EPCRA”**

138. EPCRA was enacted on October 17, 1986 as Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499 (1986), (codified at 42 U.S.C. §§ 11002-11050).

139. The purpose of EPCRA was to provide communities with information on potential chemical hazards within their boundaries and to foster state and local emergency planning efforts to control any accidental releases. Emergency Planning and Community Right to Know Programs, Interim Final Rule, 51 Fed.Reg. 41,570 (1986).

140. To achieve this end, EPCRA imposes a system and mandates notification requirements on industrial and commercial facilities and mandates that state emergency response commissions and local emergency planning committees be created. EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of a health-threatening release. The local emergency planning committees are charged with developing emergency response plans based on the information provided by facilities. Sections 301-303 of EPCRA, 42 U.S.C. §§ 11001-11003.

141. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of the EPA to publish a list of Extremely Hazardous Substances ("EHSs") which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any EHS, the release of which shall be required to be reported under Sections 304(b) and 304(c) of EPCRA, 42 U.S.C. §§ 11004(b) and (c) ("Reportable Quantity" or "RQ"). The list of RQs of hazardous substances is codified at 40 C.F.R. Part 302, and the list of RQs for extremely hazardous substances is codified at 40 C.F.R. Part 355, Appendices A and B.

### **GENERAL ALLEGATIONS**

142. The allegations of paragraphs 1 through 141, above, are realleged and fully incorporated herein by reference.

143. Motiva is a person as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 40 C.F.R. Parts 355.20 and 370.2.

144. On March 13, 2001, EPA conducted a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 103/EPCRA Sections 302-312 Inspection of the Delaware Facility.

145. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and 40 C.F.R. Part 355.40(b)(1), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ.

146. The SERC for the Defendant's Facility is, and has been at all times relevant to this Complaint, the Delaware Department of Natural Resources and Environmental Control (DNREC), located at 156 South State Street in Dover, Delaware, 19903.

147. The LEPC for the Defendant's Facility is, and has been at all times relevant to this Complaint, the New Castle County LEPC, located at 304 Beechwood Road in Wilmington, Delaware, 19809.

#### **COUNT SEVEN - VIOLATIONS OF EPCRA**

148. The allegations of paragraphs 1 through 147, above, are realleged and fully incorporated herein by reference.

149. Sulfur dioxide is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and 40 C.F.R. Part 355.20, with an RQ of 500 pounds as listed in 40 C.F.R. Part 355 (Appendices A and B).

150. Upon information and belief, beginning on or about June 23, 2000, at or about 10:38 p.m. and continuing until 10:46 p.m. an estimated quantity of 2,317 pounds of sulfur

dioxide, Chemical Abstracts Service ("CAS") No. 7446-09-5, were released from the Defendant's Facility.

151. The June 23, 2000 release of sulfur dioxide from the Defendant's Facility constitutes a release of an EHS in a quantity equal to, or greater than, its RQ requiring immediate notification under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b) and 40 C.F.R. Part 355.40(b).

152. Upon information and belief, the Defendant discovered the release on June 23, 2000 at or about 10:46 p.m.

153. Defendant did not immediately notify the SERC, *i.e.*, DNREC, of the occurrence of the June 23, 2000 release as soon as the Defendant had knowledge of the release, as required by Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1) and 40 C.F.R. Part 355.40(b)(1). Instead, the SERC was notified by EPA's National Response Center ("NRC") of the release on August 8, 2000, approximately 46 days after the release was discovered.

154. Defendant's failure to immediately notify the SERC of the June 23, 2000 release is a violation of Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), and is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

155. Defendant did not immediately notify the New Castle County LEPC of the occurrence of the June 23, 2000 release, as soon as the Defendant had knowledge of the release, as required by Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1) and 40 C.F.R. Part 355.40(b)(1).

156. Defendant's failure to immediately notify the New Castle County LEPC of the June 23, 2000 release is a violation of Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), and

is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

157. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355.40, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to provide, as soon as practicable, a written follow-up report regarding the release to the SERC and the LEPC when there has been a threat of a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ. The list of RQs for hazardous substances is codified at 40 C.F.R. Part 302. The RQ for an EHS is the quantity determined by EPA regulation as requiring notice and as published in Appendices A and B of 40 C.F.R. Part 355, the release of which shall be required to be reported under Section 304 of EPCRA, 42 U.S.C. § 11004.

158. Defendant did not provide a written follow-up report regarding the June 23, 2000 release to the SERC until approximately 38 days after the release was discovered.

159. Defendant's failure to provide, as soon as practicable, a written follow-up report regarding the release to the SERC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

160. Defendant did not provide a written follow-up report regarding the June 23, 2000 release to the New Castle County LEPC.

161. Defendant's failure to provide, as soon as practicable, a written follow-up report regarding the June 23, 2000 release to the New Castle County LEPC is a violation of Section

304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

162. Upon information and belief, beginning on or about August 12, 2000, at or about 09:40 p.m. and continuing until 10:55 p.m., an estimated quantity of 10,949 pounds of sulfur dioxide, CAS No. 7446-09-5, were released from the Defendant's Facility.

163. The August 12, 2000 release of sulfur dioxide from the Defendant's Facility constitutes a release of an EHS in a quantity equal to, or greater than, its RQ requiring immediate notification under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b) and 40 C.F.R. Part 355.40(b).

164. Upon information and belief, the Defendant discovered the release on August 12, 2000, at or about 10:55 p.m.

165. Defendant did not provide a written follow-up report regarding the August 12, 2000 release to the SERC until approximately 17 days after the release was discovered.

166. Defendant's failure to provide, as soon as practicable, a written follow-up report regarding the release to the SERC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

167. Defendant did not provide a written follow-up report regarding the August 12, 2000 release to the New Castle County LEPC.

168. Defendant's failure to provide, as soon as practicable, a written follow-up report regarding the August 12, 2000 release to the New Castle County LEPC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

169. Under Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), as adjusted by 40 C.F.R. § 19.4, the United States seeks a penalty of not more than \$27,500 per day for each day during which the first violation continued. In the case of the subsequent violations, the amount of such penalty may be not more than \$82,500 for each day during which the violation continued.

### **STATUTORY FRAMEWORK - CERCLA § 103**

170. CERCLA Section 102(a), 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which when released into the environment may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ").

171. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to, or greater than the RQ to immediately notify the NRC established under the Section 311(d)(2)(E) of the CWA, 33 U.S.C. § 1321(d)(2)(E), of such release.

### **COUNT EIGHT** **VIOLATIONS OF SECTION 103 OF CERCLA, 42 U.S.C. § 9603**

172. The allegations of paragraphs 1 through 171, above, are realleged and fully incorporated herein by reference.

173. Motiva's Delaware City Refinery is a "facility," as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. Part 302.3.



174. As a Limited Liability Corporation (LLC), Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. Part 302.3.

175. Upon information and belief, beginning on or about March 1, 2000 at or about 11:40 a.m., a facility representative had knowledge that an estimated quantity of 15.8 pounds of benzene, CASRN No. 71-43-2, was released from the Defendant's Facility.

176. Benzene, CASRN No. 71-43-2, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of ten (10) pounds, as listed in 40 C.F.R. Part 302, Table 302.4.

177. The March 1, 2000 release of benzene from Defendant's Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

178. The March 1, 2000 release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

179. Upon information and belief, Defendant had knowledge of the release on Saturday, March 1, 2000 at or about 11:40 a.m.

180. Defendant did not immediately notify the NRC of the March 1, 2000 release, as soon as the Defendant had knowledge of the release, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6. Instead, the Defendant notified the NRC of the release on Monday, March 3, 2000, approximately two days after the release was discovered.

181. Defendant's failure to immediately notify the NRC of the March 1, 2000 release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

182. Upon information and belief, beginning on or about September 9, 2000 at or about 12:30 p.m., an estimated quantity of 110.4 pounds of benzene, CASRN No. 71-43-2, were released from the Defendant's Facility.

183. Benzene, CASRN No. 71-43-2, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds, as listed in 40 C.F.R. Part 302, Table 302.4.

184. The September 9, 2000 release of benzene from Defendant's Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

185. The September 9, 2000 release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

186. Upon information and belief, Defendant had knowledge of the release on September 9, 2000 at or about 12:50 p.m. (1250 hours).

187. Defendant did not immediately notify the NRC of the September 9, 2000 release as soon as the Defendant had knowledge of the release, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6. Instead, the Defendant notified the NRC of the release on September 9, 2000 at 5:15 p.m., approximately four hours and 25 minutes after the release was discovered.

188. Defendant's failure to immediately notify the NRC of the September 9, 2000 release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

189. Under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), as adjusted by 40 C.F.R. § 19.4, the United States seeks a penalty of not more than \$27,500 per day for each day during which the first violation continued. In the case of the subsequent violations, the amount of such penalty may be not more than \$82,500 for each day during which the violation continued.

**STATUTORY FRAMEWORK - CLEAN AIR ACT SECTION 112(r)**

190. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides in pertinent part as follows:

[t]he owners and operators of stationary sources producing, processing, handling or storing [any substance listed pursuant to Section 112(r)(3) of the CAA or any other extremely hazardous substance] have a general duty in the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654]) to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

191. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701, provides that the Administrator of EPA shall, in the case of a person which is the owner or operator of a major stationary source, and may, in the case of any other person, whenever such person violates any requirement or prohibition of Subchapter I of the CAA (42 U.S.C. §§ 7401-7515), commence a civil action for injunctive relief and to assess and recover a civil penalty of up to \$25,000 per day for each such violation occurring on or before January 30, 1997, and up to \$27,500 per day for each such violation occurring after January 30, 1997.

**GENERAL ALLEGATIONS - CLEAN AIR ACT SECTION 112(r)**

192. The Facility is a "stationary source" within the meaning of Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

193. Motiva is an "owner or operator" of a stationary source within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

194. At all relevant times, the Facility produced, processed, handled and/or stored sulfuric acid, an extremely hazardous substance listed as such pursuant to Section 302(a) of the EPCRA, 42 U.S.C. § 11002(a).

195. At all relevant times, the Facility produced, processed, handled and/or stored butane, isobutane, propane, isopentane, and pentane, which are listed and regulated hazardous substances under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and its implementing regulations, 40 C.F.R. § 68.130.

196. At all relevant times, the Facility produced, processed, handled and/or stored sulfur dioxide, a listed and regulated hazardous substances under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and its implementing regulations, 40 C.F.R. § 68.130.

197. On July 17, 2001, the Facility released to the air at least 101,000 pounds of sulfur dioxide, 135,000 pounds of sulfuric acid or Spent Sulfuric Acid , and quantities of butane, isobutane, propane, isopentane, pentane, and other constituents of Spent Sulfuric Acid.

198. The release of Spent Sulfuric Acid, sulfur dioxide, sulfuric acid, butane, isobutane, propane, isopentane, pentane, and other components of Spent Sulfuric Acid from the Facility on July 17, 2001 constituted an "accidental release" within the meaning of Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412 (r)(2)(A).

**COUNT EIGHT**  
**CAA SECTION 112(r) – FAILURE TO IDENTIFY HAZARDS**

199. Paragraphs 1 through 198 are incorporated herein by reference.

200. Motiva failed to identify, through the use appropriate hazard assessment techniques, the hazards associated with an accidental release of Spent Sulfuric Acid, sulfur dioxide, sulfuric acid, butane, isobutane, propane, isopentane, pentane, and other components of Spent Sulfuric Acid from spent acid tanks at the Facility.

201. As a result of its failure to identify those hazards, Motiva violated the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

202. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended, Motiva is liable for injunctive relief and the assessment of a civil penalty of up to \$25,000 per day for each such violation occurring on or before January 30, 1997, and up to \$27,500 per day for each such violation occurring after January 30, 1997.

**COUNT NINE**  
**CAA SECTION 112(r) – FAILURE TO**  
**DESIGN AND MAINTAIN A SAFE FACILITY**

203. Paragraphs 1 through 202 are incorporated herein by reference.

204. Motiva failed to design and maintain Tank 393 to prevent releases of Spent Sulfuric Acid, sulfur dioxide, sulfuric acid, butane, isobutane, propane, isopentane, pentane, and other components of Spent Sulfuric Acid and therefore failed to design and maintain a safe facility taking such steps as are necessary to prevent such releases.

205. As a result of its failure to design and maintain a safe facility, Motiva violated the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

206. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended, Motiva is liable for injunctive relief and the assessment of a civil penalty of up to \$25,000 per day for each such violation occurring on or before January 30, 1997, and up to \$27,500 per day for each such violation occurring after January 30, 1997.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, United States of America, respectfully requests from this Court the following relief:

(a) Enjoin Defendant from further unauthorized releases or discharges of hazardous substances and oil in violation of the CWA, CERCLA, and EPCRA, and require Defendant to take appropriate action to prevent or mitigate the effects of the release/discharge as well as further release/discharge; and

(b) Order Defendant to develop and implement a comprehensive Environmental Management System to ensure compliance with applicable environmental laws; and

(c) Order Defendant to pay a civil penalty of up to \$3,300 for each unit of reportable quantity of hazardous substances discharged or \$110,000 per day, and \$3,300 for each barrel of oil or \$110,000 per day, whichever is greater; or

(d) Order Defendant to pay a civil penalty of up to \$1,100 for each unit of reportable quantity of hazardous substances discharged or \$27,500 per day, and \$1,100 for each barrel of oil or \$27,500 per day, whichever is greater; and

(e) Order Defendant to pay unreimbursed costs incurred or to be incurred by the United States for response activities related to the Facility, including pre-judgment interest; and

(f) Assess civil penalties against Motiva of up to \$25,000 per day of violation for each and every violation of the CWA and the SPCC regulations occurring on or before January 30, 1997, and up to \$27,500 per day for each and every violation after January 30, 1997, pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C); and

(g) Assess civil penalties against Motiva of up to \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation assessed under Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); and

(h) Assess civil penalties against Motiva of up to \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation assessed under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c); and

(i) Assess civil penalties against Motiva of up to \$25,000 per day of violation for each and every violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), occurring on or before January 30, 1997, and up to \$27,500 per day for each and every violation after January 30, 1997, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); and

(i) Award such other relief to which the United States may be entitled, including the costs of this action; and

(j) Grant further relief as the Court deems just and proper.

Respectfully submitted,

---

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

---

ROBERT R. KLOTZ

Senior Attorney

JOHN W. SITHER

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611, Ben Franklin Station

Washington, D.C. 20044

Tel. 202- 616-7149

---

RICHARD G. ANDREWS

Acting United States Attorney

RUDOLPH CONTRERAS

Chief, Civil Division

DOUGLAS E. McCANN

Assistant United States Attorney

JOYCE A. HOWELL

Special Assistant United States Attorney

Chase Manhattan Centre

1201 Market Street, Suite 1100

Wilmington, Delaware 19899-2046

Tel. (302) 573-6277

OF COUNSEL:

NATALIE KATZ

Senior Assistant Regional Counsel

U.S. EPA - Region III

1650 Arch Street

Philadelphia, PA 19103-2029

Dated: \_\_\_\_\_